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CLIENT ALERT

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24 Legislative Update: 56 New Laws Targeting Housing Development Become Effective in California

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The California Legislature's laser focus on addressing the state housing crisis did not subside during the 2023 legislative session. While legislators proposed over 150 housing bills, only a fraction of those bills were approved by both chambers. Still, Governor Gavin Newsom signed 56 housing bills into law. These bills include landmark bills that: extend and expand SB 35's streamlining provisions (SB 423); penalize jurisdictions that fail to timely process a project's CEQA review (AB 1633); and permit affordable housing projects by-right on land owned by higher education institutions or religious institutions (SB 4). Several of these new laws expressly target the City and County of San Francisco, which notoriously subjects housing projects to the longest and most extensive reviews of anywhere in the state. The major new laws we are excited to see implemented are summarized here. Unless otherwise indicated, all of these laws became effective on January 1, 2024.

We are also monitoring ongoing litigation with respect to jurisdictions that have not obtained housing element certification following deadlines imposed by the Department of Housing and Community Development ("HCD"). We expect these and other Builder's Remedy challenges to heat up in the New Year, as HCD and the Attorney General have been granted additional authority to hold localities accountable.

AB 821 (Grayson)
AB 821 makes changes to State Planning and Zoning Law's consistency requirement for a jurisdiction's general plan and zoning ordinance. If a zoning ordinance becomes inconsistent with a general plan due to an amendment of the general plan and the local agency receives a development application for a project that is not subject to Section 65589.5 (the Housing Accountability Act), and the project is consistent with the general plan, but inconsistent with the zoning ordinance, the local agency must either: (1) amend the zoning ordinance within 180 days from receipt of the application; (2) process the application in accordance with all laws, applying objective general plan standards, but not inconsistent zoning standards; or (3) if the zoning ordinance is not amended in 180 days, then the application may be processed as indicated previously. (Gov. Code, § 65860(c).)

In the event that a jurisdiction's general plan and zoning ordinance ever become inconsistent, AB 821 allows a resident or property owner within such jurisdiction to bring a judicial action to compliance with the consistency requirement or compliance with the application process detailed above. (Gov. Code, § 65860(b).) AB 821 becomes effective on January 1, 2024.

AB 894 (Friedman)
AB 894 seeks to reconcile the abundance of available parking with new development parking requirements. Essentially, the law will allow for entities that cannot meet their parking requirements to use parking located on a separate property with a shared parking agreement. (Gov. Code, § 65863.1(b).) Generally, this will require inclusion of a parking analysis that determines how many parking spaces can be reasonably shared between uses to fulfill parking requirements. (Gov. Code, § 65863.1(c)(1)(A).) This statute cannot reduce the number of parking spaces required for persons with disabilities or spaces designated for electric vehicles. (Gov. Code, § 65863.1(g)-(h).) AB 894 becomes effective on January 1, 2024.

AB 1033 (Ting)
AB 1033 makes minor changes to the state's ADU laws. Once effective, the law will allow an ADU to be sold separately from the main unit, with both units becoming condominium units. (Gov. Code, § 65852.2(a)(10).) This benefit does not apply statewide, but only provides local jurisdictions with the authority to adopt an ordinance permitting such conveyances. (Gov. Code, § 65852.2(a)(10).) AB 1033 becomes effective on January 1, 2024.

AB 1114 (Haney)
AB 1114 establishes a new definition for "postentitlement phase permit," to include any "nondiscretionary permits and reviews that are required or issued by the local agency after the entitlement process has been completed to begin construction of a development" that is at least 2/3 residential. (Gov. Code, § 65913.3(j)(3)(A).) This includes building permits, "permits for minor or standard off-site improvements," permits for demolition, permits for minor or standard excavation and grading, and "all building permits and other permits issued under the California Building Standards Code or any applicable local building code" whether discretionary or nondiscretionary. (Gov. Code, § 65913.3(j)(3)(A).)

A local agency has 30 days to make a determination of whether a complete postentitlement phase permit application for projects of 25 or fewer units is compliant with the applicable permit standards. (Gov. Code, § 65913.3(c)(1)(B).) For projects of 26 or more units, the local agency has 60 days. (Gov. Code, § 65913.3(c)(2)(B).) If either type of application is consistent with the permit standards, the local agency must return the approved application within the timeframe provided. (Gov. Code, § 65913.3(c).)

This law will especially be useful in jurisdictions like San Francisco, which provide neighbors with opportunities to appeal postentitlement permits for projects that have already obtained entitlements. AB 1114 becomes effective on January 1, 2024.

AB 1218 (Lowenthal)
This law modifies the prohibition of projects in affected cities that would result in a demolition of residential dwellings. The law expands the prohibition to any site where protected residential units were demolished in the previous five years, unless specified requirements are met. (Gov. Code, § 66300.6(b).) This law does not apply to industrial use projects, or zones that do not allow for residential uses, or that the protected units are or were nonconforming uses. (Gov. Code, § 66300.6(b)(1)(C).) The developer must provide specified benefits to current residents on such sites, including relocation benefits, and a right of

first refusal for a unit in the new development. (Gov. Code, § 66300.6(b)(4).) AB 1218 becomes effective on January 1, 2024.

AB 1287 (Alvarez)
AB 1287 makes modifications to the State Density Bonus Law ("DBL"). First, the law redefines the term "maximum allowable residential density" to the greatest number of units allowed under either the applicable zoning, specific plan, or general plan. (Gov. Code, § 65915(o)(6).) Additionally, the law provide an "additional density bonus" for housing projects that meet specified conditions. An eligible project cannot restrict more than 50% of total units to households eligible for affordable housing. (Gov. Code, § 65915(v)(1).) When a project otherwise complies with the DBL, the project may benefit from an additional density bonus by providing a specified percentage over very low or moderate-income units. (Gov. Code, § 65915(v)(2).) This additional density bonus can range from 20% to 50% depending on the percentage of additional affordable units provided. AB 1287 becomes effective on January 1, 2024.

AB 1332 (Carrillo)
By January 1, 2025, AB 1332 will require local agencies to develop a program for the preapproval of ADU plans, where the local agency accepts those ADU plan submissions for preapproval. (Gov. Code, § 65852.27(a).) The local agency will be required to post the plans for these preapproved units on their websites. (Gov. Code, § 65852.27(a)(4)(A)(i).) The local agency must approve applications for such ADUs ministerially and without discretionary review. (Gov. Code, § 65852.27(b).) AB 1332 becomes effective on January 1, 2024.

AB 1449 (Alvarez)
AB 1449 provides a statutory CEQA exemption for certain affordable housing projects. Such projects must provide at least two-thirds of the square footage for residential use and all residential units must be dedicated to lower income households. (Pub. Res. Code, § 21080.40(a).) Eligible projects must meet specified labor standards. (Pub. Res. Code, § 21080.40(a)(1)(B)(i).) Such a project must be proximal to six or more specified amenities (e.g. near a bus station, supermarket, public park, pharmacy, etc.). (Pub. Res. Code, § 21080.40(a)(1)(C), (D).) Such project sites must also meet specified environmental criteria. (Pub. Res. Code, § 21080.40(c)(3).) AB 1449 becomes effective on January 1, 2024 and sunsets on January 1, 2033.

AB 1485 (Haney)
This simple law will allow the Attorney General and HCD to intervene in any lawsuit seeking to enforce many of the state's major housing laws. (Gov. Code, § 65585.01.) AB 1485 becomes effective on January 1, 2024.

AB 1633 (Ting)
Assembly Bill 1633 will amend the Housing Accountability Act to prohibit local agencies from refusing to evaluate a project's environmental impacts under CEQA. Unless further amended, the bill generally establishes a new definition for actions that constitute disapproval of a housing development project.

First, AB 1633 considers a failure to make a determination that a project meeting certain conditions is exempt from CEQA, to be a disapproval of a project. (Gov. Code, § 65589.5(h)(6)(D).) Second, AB 1633 includes in the definition of project disapproval, a failure "to adopt a negative declaration or addendum for the project, to certify an environmental impact report for the project, or to approve another comparable environmental document" if certain conditions are satisfied. (Gov. Code, § 65589.5(h)(6)(E).) The site cannot be subject to specified environmental conditions enumerated in Section 65913.4. (Gov. Code, § 65589.5(h)(6)(E)(i).) Among other qualifications, the site can be either: (i) in an urbanized area; or (ii) in proximity to at least six of a list of specified amenities (e.g. defined to include being within ½ mile of a bus station, grocery store, parks, pharmacies, etc.). (Gov. Code, § 65589.5(h)(6)(E)(ii)(III).)

The density of the housing must be at least 15 units per acre. (Gov. Code, § 65589.5(h)(6)(E)(iii).) A negative declaration, addendum, EIR, or comparable environmental document that satisfies CEQA with respect to the project, must have been prepared. (Gov. Code, § 65589.5(h)(6)(E)(iv).) The local agency must have either committed an abuse of discretion or failed to evaluate the applicable CEQA document. (Gov. Code, § 65589.5(h)(6)(E)(v).)

If the above conditions are met, the applicant may give written notice to the local agency. If the local agency does not "make a lawful determination about whether to adopt, approve, or certify the environmental review document within 90 days of the applicant's written notice," then the project is deemed to be disapproved and the local agency is deemed to have committed an abuse of discretion. (Gov. Code, § 65589.5(h)(6)(E)(vi).) An applicant may thereafter bring an action to enforce the HAA. AB 1633 goes into effect on January 1, 2024 and sunsets on January 1, 2031.

When effective, AB 1633 will provide a tool for preventing the City's bad faith failure to evaluate the Project under CEQA. This bill would close a loophole that currently allows jurisdictions to refuse to complete the necessary environmental review for Builder's Remedy projects, essentially stalling such projects in perpetuity. AB 1633 will render such bad acts an abuse of discretion. AB 1633 becomes effective on January 1, 2024.

SB 4 (Wiener)

Otherwise known as the "YIGBY" ("Yes in God's Backyard") bill, SB 4 will allow for the by-right development of a housing development project meeting certain criteria. (Gov. Code, § 65913.16(c).) The proposed project must be located on land owned by an "institution of higher education or a religious institution." (Gov. Code, § 65913.16(c)(1).) The property cannot be adjoined by any other site where more than 1/3 of the square footage on the sight is dedicated to a light industrial use or within 1,200 feet of a heavy industrial use. (Gov. Code, § 65913.16(c)(5)-(6).) The proposed project must provide 100% of its units for lower income households, except that up to 20% may be made available to moderate-income households. (Gov. Code, § 65913.16(c)(9).) The applicant must certify that either: the project is a "public work;" or if the project contains more than 10 units, all workers will be paid a prevailing wage. (Gov. Code, § 65913.16(c)(12).) SB 4 becomes effective on January 1, 2024 and sunsets on January 1, 2036.

SB 423 (Wiener)
SB 423 is another major piece of housing legislation from this past session. It extends SB 35 (2016)'s streamlining provisions an additional ten years past its original expiration date: to January 1, 2036. (Gov. Code, § 65913.4(v).) Critically, SB 423 extends its provisions into the Coastal Zone, which was previously exempt from SB 35, under certain conditions. (Gov. Code, § 65913.4(t)(1).) For example, the proposed project cannot be in an area of the coastal zone: that is vulnerable to five feet of sea level rise, on a parcel not zoned for multifamily housing, or within a 100-foot radius of a wetland, or on prime agricultural land, or on land subject to several other environmental constraints. (Gov. Code, § 65913.4(a)(6)(A).) Additionally, SB 426 prohibits a local government from requiring frivolous studies as a condition of approving a permit. (Gov. Code, § 65913.4(f).) This law imposes additional labor requirements on qualifying projects. (Gov. Code, § 65913.4(a)(8).)

Recognizing the City and County of San Francisco's exceptionally protracted permitting process, the law subjects San Francisco to an annual reporting requirement for state housing law compliance (versus every four years for all other jurisdictions). (Gov. Code, § 65913.4(m)(12)(B).) This could result in the applicability of increased penalties on S.F. if it fails to quickly make required changes to its housing approval process. SB 423 becomes effective on January 1, 2024 and sunsets on January 1, 2036.

SB 684 (Caballero)
SB 684 was significantly watered down to be less effective than its author originally intended. The law will require a local agency to ministerially approve a parcel or tentative map for a residential subdivision of 10 or fewer parcels if the project meets certain requirements. (Gov. Code, § 66499.41(a).) The property must be zoned for multifamily residential development, no larger than five acres in size, and substantially surrounded by urban uses. (Gov. Code, § 66499.41(a)(2).) Proposed lots can be no smaller than 600 square feet. (Gov. Code, § 66499.41(a)(3)(A).) The average total area of floor space for the proposed housing units cannot exceed 1,750 net habitable square feet. (Gov. Code, § 66499.41(a)(6).)

The proposed project must be located on a parcel identified in the jurisdiction's housing element and result in at least as many units as projected for that parcel, or otherwise "will result in at least as many units as the maximum allowable residential density." (Gov. Code, § 66499.41(a)(5).) The site must not be subject to standard environmental conditions. (Gov. Code, § 66499.41(a)(9).) Much of SB 684 becomes effective on July 1, 2024, except for the provision limiting the law's applicability to certain "single-family residential horsekeeping" zones in jurisdictions with housing elements compliant with state law. That minor provision goes into effect on January 1, 2024.

SB 713 (Padilla)
This law makes a minor change to the State Density Bonus Law, expanding the definition of "development standard" to include regulations enacted by the electorate through the local initiative or referendum power. (Gov. Code, § 65915(o)(2).) This clarifies the scope of the development standards that mat be waived for qualifying projects. SB 713 becomes effective on January 1, 2024.

Ongoing Housing Element Litigation

Litigation challenging cities' noncompliance with state housing laws continues across the state. Many of the most prominent housing element cases are in Southern California, where 6th Cycle Housing Elements were due in October 2021. Cases we are monitoring include the challenge to the City of La Cañada-Flintridge's Housing Element, in which the Attorney General Rob Bonta recently decided to intervene. In July 2023, a Los Angeles County Superior Court judge determined the city's housing element to be noncompliant with state law, paving the way for builder's remedy projects to proceed.

Separately, on December 21, 2023, another Los Angeles County Superior Court judge enjoined the City of Beverly Hills from issuing ***any*** building permits (except those that result in a net increase in bedrooms or housing units), until the city brings its housing element into compliance with state law. (*Californians for Homeownership v. City of Beverly Hills* (2023), Case No. 23STCP00143.) Judge Kin additionally ordered the city to bring its housing element into compliance with state law within 120 days. In September 2023, the court had found the city failed to realistically plan for the 3,104 RHNA units assigned to it. This appears to be the first injunction under state Housing Element Law revoking a jurisdiction's permitting authority.

If you have any questions about these new laws, please reach out to Braeden Mansouri or Alicia Guerra.

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